UNITED NATIONAL FINANCE BHD.

v.

INDERARAJAH SINNADURAI

HIGH COURT MALAYA, KUALA LUMPUR
LC VOHRAH J
[ORIGINATING SUMMONS NO. F 1103 OF 1984]
26 NOVEMBER 1985

LAND LAW: *Land charged - Sale by public auction - Section 257 of National Land Code - Admission of liability by respondent - Delay by respondent.*

The applicant was applying for an order that the respondent's land that is charged to the applicant by way of first charge be sold by public auction under the National Land Code to satisfy the sum owing to the applicant. The respondent had, at the first hearing, admitted liability and had asked the Court for time to pay up. Counsel for the applicant had no objections to this request. The hearing was adjourned for 5 months and the learned Judge indicated to the respondent that there would be no further adjournments. On three subsequent adjourned dates the respondent was absent, although on the latter two occasions he had produced medical certificates to indicate his inability to be present at the hearings. The learned Judge decided to give the respondent another chance to appear but the respondent failed to appear once again. Counsel for the applicant was by now strongly objecting to any more postponements.

Held:
On the most recent hearing date of 18 October 1985, it was clear that the respondent was just playing for time and it was not right and just in the circumstances of this case that the applicant should be prevented further from obtaining the order for sale in the light of the respondent's unconditional admission of liability at the first hearing.

[Order for sale in terms of the application.]

Legislation referred to:
National Land Code 1965, s. 257

For the applicant - T.J. Lim; M/s. Stephen Goh & Partners
Defendant absent.

JUDGMENT

LC Vohrah J:

This was an application on the part of the applicant for an order that the respondent's land held under H.S.(D) No. 4844 PTD No. 4589 in the Mukim of Simpang Kanan and charged to the applicant by way of a first charge be sold by public auction under the National Land Code to satisfy the sum of RM87,711.45 calculated up to 31 March 1984 together with interest thereon at the rate of RM36.05 per day calculable as from 1 April 1984 to the date of full payment or realisation.

When the application first came up for actual hearing before me on 2 April 1985 the respondent, who is a practising advocate and solicitor, appeared in person and informed the Court that, despite encl. (18), he was not contesting the application as he was admitting the debt as claimed. He however asked the Court that he be given time to pay up. As Counsel

for the applicant did not object to time being given to the respondent, I adjourned the hearing of the application to 4 September 1985 indicating to the respondent that there would be no further adjournments. However, on 4 September 1985 the respondent failed to appear in person and Mr. A. Charles mentioned the case on his behalf. As the amount due on that date was not available I adjourned the hearing of the application to 1 October 1985. On this adjourned date the respondent was again absent but he had a few days earlier on 28 September 1985 sent a letter (see encl. (14)) forwarding a medical certificate stating that he was unfit for work for 4 days from 28 September to 1 October 1985 and that he was required to present himself for a medical examination on 1 October itself at 11.30 a.m. Counsel for the applicant objected to any further adjournments as she said that she had seen the respondent going to his office nearby her own office despite the medical certificate. I, however, was of the view that the respondent ought to be given another chance to appear and adjourned the matter to 18 October 1985 and to ensure his attendance directed the Senior Assistant Registrar to inform the respondent that the hearing had been adjourned for the last time to 18 October 1985 and that he had to turn up. Before the date of the adjourned hearing the respondent rang up my secretary to ask for an appointment to see me about this matter and I intimated that I was not prepared to see him alone but would be willing to meet him and Counsel for the applicant together. No such meeting came about and on 18 October 1985 the respondent failed once more to appear but he had again on 16 October 1985 sent another letter (See encl. (18)) forwarding another medical certificate stating that he was unfit for work from 12 October 1985 to 18 October 1985. This letter intimated that he had seen solicitors for the applicant and "had explained to them for final postponement in this matter" and they "were sympathetic to my request for postponement but they have requested to apply to His Lordship for this postponement". But Counsel for the applicant at his hearing objected to any more postponements as she indicated that auditors had been questioning the applicant for its seemingly dilatory action in these foreclosure proceedings.

It was clear to me that the respondent was just playing for time and I did not think it was right and just in the circumstances of this case that the applicant should be prevented further from obtaining the order for sale in the light of the respondent's unconditional admission of liability at the first hearing.

I accordingly made an order for sale in terms of the application in the sum of RM93,392.26 due to the applicant on 18 October 1985 (see encl. (17)) as required by s. 257 of the National Land Code.

Also found at [1986] 1 CLJ 353